

MY DIRECT DIAL IS: (631) 247-4666

MY EMAIL ADDRESS IS: WILLIAM.KANG@JACKSONLEWIS.COM

October 13, 2022

VIA ECF

Honorable Ann M. Donnelly
United States District Court, Eastern District of New York
225 Cadman Plaza East
Courtroom 4GN
Brooklyn, New York 11201

Re: *Fitzgerald v. Sodexo Inc., et al.*,

Case No.: 22-cv-3410 (AMD) (CLP)

Dear Judge Donnelly:

We represent Sodexo Inc. (“Defendant” or “Sodexo”) in the above-referenced matter and write to request an Order clarifying the correct deadline for Sodexo to answer or otherwise respond to the Complaint, or in the alternative to grant an extension. In short, the Docket in this matter erroneously indicates that Sodexo’s deadline to answer the Complaint was October 11, 2022. However, this deadline was calculated based on an incorrect date of service of the Summons. As explained below, the Summons was not served on September 20, 2022. Rather, the Notice of Waiver of Summons was served that date. Defendants returned the Waiver within the permitted 30 days on October 7, 2022. Thus, the correct deadline for Sodexo to answer the Complaint is 21 days thereafter, or October 28, 2022.

As the Court is aware, Plaintiff Barry Fitzgerald is appearing *pro se* in this matter. On July 12, 2022, the Court issued a Memorandum and Order stating, “The Clerk of Court is respectfully requested to prepare a summons for defendant[] Sodexo Inc. . . . , and to forward the summons and the complaint to the United States Marshals Service for service without prepayment of fees.” *Id.* On July 12, a Summons was issued to Sodexo. *See* Docket No. 5.

On September 20, 2022, Sodexo received via certified mail a package from the United States Marshal Service containing a copy of the Summons and Complaint and four copies of Form USM-299, the United States Marshals Service’s “Notice and Acknowledgment of Receipt of Summons and Complaint By Mail.” *See Exhibit A* (Form USM-299) (“USM-299”). Clearly, the Marshals Service was invoking the voluntary service provisions. It was not actually serving the Summons because that cannot be done by certified mail. Further, USM-299 specifically states that Sodexo had 30 days to return the form. Upon return, Sodexo would then have 21 days to respond to the Complaint. *See id.*

In accordance with the instructions on USM-299, the undersigned timely returned two executed copies of USM-299 to the United States Marshals Service via overnight mail, shipped on October 7, 2022. *See* **Exhibit B** (Defendant's correspondence to Marshals Service enclosing Form USM-299, with UPS shipping and delivery confirmation). Accordingly, the correct date from which to calculate Sodexo's deadline to answer the Complaint is October 7, 2022. This means that the date 21 days after October 7, 2022, or **October 28, 2022**, is the correct deadline to answer the Complaint. Unfortunately, however, the docket entry apparently assumed that actual service of the Summons was completed on September 20, which as noted above, was not the case.

Notably, Docket No. 6 is not an executed copy of the Summons (as the docket entry notes). Rather it is proof that the Marshals Service served the waiver form. *See* **Exhibit C** (Docket No. 6) ("USM-285") (noting in the "Remarks" section that the Marshals Service served the USM-299 waiver form).

Accordingly, Sodexo respectfully requests that the Court enter an Order setting Sodexo's deadline to answer or otherwise respond to the Complaint as October 28, 2022. We thank the Court for its attention to this matter.

Respectfully submitted,

JACKSON LEWIS P.C.

William Kang

William Kang

cc.: Barry Fitzgerald (via regular mail)

Enclosures

EXHIBIT A

U.S. Department of Justice
United States Marshals Service



NOTICE AND ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT BY MAIL

United States District Court
for the
Eastern District of New York

TO: Sodexo, Inc. ET AL.
9801 Washingtonian Blvd
Gaithersburg, MD 20878

Civil Action, File Number 1:22-CV-3410 (AMD)

Barry Fitzgerald

v.

Sodexo, Inc. , Et. Al.

The enclosed summons and complaint are served pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure, and New York State law.

You **MUST COMPLETE** the acknowledgment part of this form below, **AND RETURN COPIES 1 AND 2** to the sender within 30 days. An envelope has been enclosed for this purpose. Keep copy 3 for your records.

YOU MUST SIGN AND DATE THE ACKNOWLEDGMENT ON ALL COPIES. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return copies 1 and 2 of this form to the sender within 30 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return copies 1 and 2 of this form, you (or the party on whose behalf you are being served) must answer the complaint within 21 days for private defendants and/or 60 days for Federal defendants. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint By Mail was mailed on this date.

09/09/2022

Date of Signature

**GERSON
PACORI**

Digitally signed by GERSON
PACORI
Date: 2022.09.09 12:53:52 -04'00'

Signature (*USMS Official*)

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above captioned manner at:

Street Number and Street Name or P.O. Box No.

Relationship to Entity/Authority to Receive

City, State and Zip Code

Service of Process

Signature

Date of Signature

Copy 1 - Clerk of Court
Copy 2 - United States Marshals Service
Copy 3 - Addressee
Copy 4 - USMS District Suspense

U.S. Department of Justice
United States Marshals Service



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U.S. Department of Justice
United States Marshals Service



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City, State and Zip Code

Service of Process

Signature

Date of Signature

Copy 1 - Clerk of Court
Copy 2 - United States Marshals Service
Copy 3 - Addressee
Copy 4 - USMS District Suspense

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

BARRY FITZGERALD

Plaintiff

v.

SODEXO, INC., ET AL.

Defendant

Civil Action No. 22-CV-3410 AMD/CLP

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

SODEXO, INC.
9801 WASHINGTONIAN BLVD.,
GAITHERSBURG, MD 20878

NY PRESBYTERIAN QUEENS HOSPITAL
56-45 MAIN STREET
FLUSHING, NY 11355

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) ~~30~~ days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 2 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

PRO SE, Barry Fitzgerald
21 St. James Place
Apt. 20N
Brooklyn, NY 11205

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 07/12/2022



BRENNA B. MAHONEY

CLERK OF COURT

[Signature]
S. GALEANO
Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JUL 12 2022 ★

BROOKLYN OFFICE

----- X
BARRY FITZGERALD,

Plaintiff,

— against —

: MEMORANDUM AND ORDER

: 22-CV-3410 (AMD) (CLP)

SODEXO INC., NY PRESBYTERIAN QUEENS,
BANKIN PAREKH and DANIEL SKUPSKI,

Defendants.
----- X

ANN M. DONNELLY, United States District Judge:

On June 7, 2022, the *pro se* plaintiff brought this action against his former employers, Sodexo Inc. and New York-Presbyterian Queens Hospital, and two individual employees, asserting claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* (“Title VII”). (ECF No. 1.) I grant the plaintiff’s application to proceed *in forma pauperis*. (ECF No. 2.) For the reasons that follow, I dismiss the plaintiff’s Title VII claims against the two individual employees but allow his claims to proceed against Sodexo Inc. and New York-Presbyterian Queens Hospital.

BACKGROUND

The plaintiff alleges that the defendants discriminated against him on the basis of race. (ECF No. 1 at 4-5.) He alleges that, after his manager Bankin Parekh struck him in April of 2019, he “made complaints,” but “nothing was done by HR,” and his “work load increased.” (*Id.* at 5.) He describes another incident in June of 2020, in which a doctor, Daniel Skupski, allegedly “signaled his hand as if it were a gun . . . and fired at [him] and said ‘Pow.’” (*Id.*) The plaintiff “made complaints to NYP Queens and [his] employer Sodexo Inc.,” and “was then

blackballed with write ups and disciplinary charges.” (*Id.*) The plaintiff further alleges that he was terminated in March of 2021 “[d]ue to [] trying to get justice.” (*Id.* at 5, 15.)

LEGAL STANDARD

To avoid dismissal, a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Matson v. Bd. of Educ.*, 631 F.3d 57, 63 (2d Cir. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Although “detailed factual allegations” are not required, a complaint that includes only “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555. A complaint fails to state a claim “if it tenders naked assertions devoid of further factual enhancement.” *Iqbal*, 556 U.S. at 678 (internal quotation marks, alterations and citations omitted).

Because the plaintiff is proceeding *pro se*, I construe his complaint liberally, and evaluate it by “less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quoting *Estate v. Gamble*, 429 U.S. 97, 106 (1976)); see also *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009). The plaintiff’s pleadings must be read “to raise the strongest arguments that they suggest.” *Fowlkes v. Ironworkers Local 40*, 790 F.3d 378, 387 (2d Cir. 2015).

Nevertheless, I must dismiss *sua sponte* an *in forma pauperis* action if it “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). An action is “frivolous” when either: (1) “the ‘factual contentions are clearly baseless,’ such as wher

allegations are the product of delusion or fantasy"; or (2) "the claim is 'based on an indisputably meritless legal theory.'" *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (internal citation omitted).

DISCUSSION

The plaintiff brings claims against the defendants pursuant to Title VII, which prohibits an employer from discriminating against an employee because of the employee's race, color, religion, sex, or national origin. *See* 42 U.S.C. § 2000e-2(a). To state a claim under Title VII, "a plaintiff must plausibly allege that (1) the employer took adverse action against him and (2) his race, color, religion, sex, or national origin was a motivating factor in the employment decision." *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 86 (2d Cir. 2015). The plaintiff "may do so by alleging facts that directly show discrimination or facts that indirectly show discrimination by giving rise to a plausible inference of discrimination." *Id.* at 87. As explained below, the plaintiff's claims against defendants Parekh and Skupski are dismissed for failure to state a claim, but his claims against the remaining defendants may proceed.

a. Bankin Parekh and Daniel Skupski

Individual defendants cannot be held liable under Title VII. *See Cayemittes v. N.Y.C. Dep't of Hous. Pres. & Dev.*, 641 F. App'x 60, 61-62 (2d Cir. 2016) (affirming dismissal of Title VII claims against defendants sued in their individual capacities, "because Title VII does not provide for individual liability"); *Scelsi v. Habberstad Motorsport, Inc.*, No. 19-CV-4315, 2022 WL 580960, at *3 (E.D.N.Y. Feb. 24, 2022) (same). Thus, the plaintiff cannot state a Title VII claim against defendants Parekh and Skupski, and his claims against them are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

b. **Sodexo Inc. and New York-Presbyterian Queens Hospital**

The plaintiff alleges that he worked for Sodexo Inc. and New York-Presbyterian Queens Hospital as a valet driver from May of 2018 until he was terminated in March of 2021. (ECF No. 1 at 5, 15.) He claims that he was discriminated against based on his race. (*Id.* at 4-5.) The plaintiff's Title VII claims against Sodexo Inc. and New York-Presbyterian Queens Hospital may proceed.

CONCLUSION

The plaintiff's claims against Bankin Parekh and Daniel Skupski are dismissed for failure to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B). The Clerk of Court is respectfully directed to amend the caption to reflect the dismissal of these defendants from the case.

The Clerk of Court is respectfully requested to prepare a summons for defendants Sodexo Inc. and New York-Presbyterian Queens Hospital, and to forward the summons and the complaint to the United States Marshals Service for service without prepayment of fees.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
July 12, 2022

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Barry Fitzgerald

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-against-

Sodexo Inc, NY Presbyterian Queens
Bankin Parekh,
Daniel Skupski

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

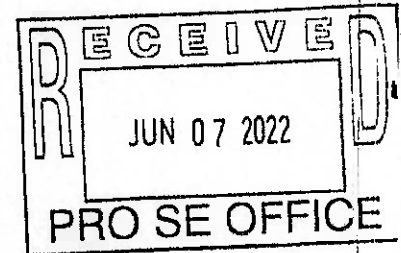
Complaint for Employment
Discrimination

Case No. **CV 22-3410**
(to be filled in by the Clerk's Office)

Jury Trial: ☐ Yes ☐ No
(check one)

DONNELLY, J.

POLLAK, M.J.



I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address

Barry Fitzgerald

21 5th Avenue PL Apt 20N

Brooklyn, Kings

NY, 11205

917-683-9181

BARRYWFTZ@GMAIL.COM

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name

Job or Title
(if known)

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address
(if known)

Sodexo Inc

Employer

9801 Washington Boulevard

Gaithersburg

MD, 20878

855-763-3914

Defendant No. 2

Name

Job or Title
(if known)

Street Address

City and County

Daniel Skupski

Medical Doctor

Unknown

State and Zip Code _____

Telephone Number _____

E-mail Address _____
(if known)

C. Place of Employment

The address at which I sought employment or was employed by the defendant(s) is:

Name

Sodexo Inc.

Street Address

140-52 Booth Memorial Ave

City and County

Flushing

State and Zip Code

NY, 11355

Telephone Number

855-763-3964

II. Basis for Jurisdiction

This action is brought for discrimination in employment pursuant to (check all that apply):



Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)



Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)



Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

☐ Other federal law (specify the federal law):

☐ Relevant state law (specify, if known):

☒ Relevant city or county law (specify, if known):

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes (check all that apply):

- ☐ Failure to hire me.
- ☒ Termination of my employment.
- ☐ Failure to promote me.
- ☐ Failure to accommodate my disability.
- ☒ Unequal terms and conditions of my employment.
- ☒ Retaliation.
- ☒ Other acts (specify): civil rights/discrimination

(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)

B. It is my best recollection that the alleged discriminatory acts occurred on date(s)

1st April 2019 - June 2020

June 2020 - March 2021

I was assaulted by my general manager, terminated, and discriminated against by Mr. Skupski a gun was pointed at me and fired. Mr. Skupski began close contact with my employer Sodexo Inc. in order to sweep under the rug, and my Queens

C. I believe that defendant(s) (check one):

- ☒ is/are still committing these acts against me.
☐ is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my (check all that apply and explain):

- ☒ race Threatened base on race.
☒ color work load much more than other staff. Threatened and discriminated due to color of my skin!
☐ gender/sex _____
☐ religion _____
☐ national origin _____
☐ age. My year of birth is _____. (Give your year of birth only if you are asserting a claim of age discrimination.)
☐ disability or perceived disability (specify disability) _____

E. The facts of my case are as follows. Attach additional pages if needed.

In April 2019, I was hit by my general manager Bonkun Forekh. I made complaints nothing was done by HR. My work load increased, compared to other staff and was unable to get overtime. In June 4, 2020 incident was caught on video on hospital grounds, Mr. Skupski signaled his hand as if it were a gun, tap his waist 2x and fired at me and said "UP DW". I made complaints to NYP Queens and my employer Sodexo INC, I was then blackballed, with write ups and disciplinary charges. I was unable to receive or see the video. Mr. Skupski

(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)

was never brought up on charges, and I had a witness present with me, who was paid by Mr. Skupski to say that incident never happened. Due to me trying to get my job terminated, and unable to provide firm testimony.

IV. Exhaustion of Federal Administrative Remedies

- A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on (date)

April 2019 - March 2021

- B. The Equal Employment Opportunity Commission (check one):

- ☐ has not issued a Notice of Right to Sue letter.
☒ issued a Notice of Right to Sue letter, which I received on (date)

April 29, 2022

(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)

- C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct (check one):

- ☐ 60 days or more have elapsed.
☐ less than 60 days have elapsed.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

Damages asking the court, for financial
compensation for harassment, discrimination,
and being terminated from my position,
also being hit by my general
manager.

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 6/7, 2022

Signature of Plaintiff

Printed Name of Plaintiff

Barry Fitzgerald
Barry Fitzgerald



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

New York District Office
33 Whitehall St, 5th Floor
New York, NY 10004
(929) 506-5270
Website: www.eeoc.gov

DETERMINATION AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 04/29/2022

To: Mr. Barry W. Fitzgerald
21 Saint James Pl
BROOKLYN, NY 11205

Charge No: 531-2021-03146

EEOC Representative:

D. Young
Investigator

DETERMINATION OF CHARGE

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 531-2021-03146.

On behalf of the Commission,

Digitally Signed By: Judy Keenan
04/29/2022

Judy Keenan
District Director

Cc:
Kimberly Hansen
Sodexo, Inc.
kim.hansen@sodexo.com

Please retain this notice for your records.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

New York District Office
33 Whitehall St, 5th Floor
New York, NY 10004
(929) 506-5270
Website: www.eeoc.ny.ny

DETERMINATION AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 04/29/2022

To: Mr. Barry W. Fitzgerald
21 Saint James Pl
BROOKLYN, NY 11205

Charge No: 531-2021-03146

EEOC Representative:

D. Young
Investigator

DETERMINATION OF CHARGE

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 531-2021-03146.

On behalf of the Commission,

Digitally Signed By: Judy Keenan
04/29/2022

Judy Keenan
District Director

Cc:
Kimberly Hansen
Sodexo, Inc.
kim.hansen@sodexo.com

Please retain this notice for your records.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

New York District Office
33 Whitehall St, 5th Floor
New York, NY 10004
(929) 506-5270
Website: www.eeoc.gov

DETERMINATION AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 04/29/2022

To: Mr. Barry W. Fitzgerald
21 Saint James Pl
BROOKLYN, NY 11205

Charge No: 531-2021-03146

EEOC Representative:

D. Young
Investigator

DETERMINATION OF CHARGE

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On behalf of the Commission,

Digitally Signed By: Judy Keenan
04/29/2022

Judy Keenan
District Director

Cc:
Kimberly Hansen
Sodexo, Inc.
kim.hansen@sodexo.com

Please retain this notice for your records.

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 531-2021-01145	
NEW YORK STATE DIVISION OF HUMAN RIGHTS and EEOC <i>State or local Agency, if any</i>			
Name (Indicate Mr., Ms., Mrs.) MR. BARRY W FITZGERALD		Home Phone 917-683-9181	Year of Birth 1985
Street Address City, State and ZIP Code 21 SAINT JAMES PL, BROOKLYN, NY 11205			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name SODEXO INC, NEW YORK PRESBYTERIAN QUEENS DR. SKUPSKI		No. Employees, Members Unknown	Phone No. (877) 729-1363
Street Address City, State and ZIP Code 9801 WASHINGTONIAN BLVD, GAITHERSBURG, MD 20878			
Name		No. Employees, Members	Phone No.
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).) <input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input checked="" type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 01-01-2019 03-29-2021 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			

I want this charge filed with both the EEOC and the State or local Agency. If any, I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct. Digitally signed by Barry W Fitzgerald on 09-09-2021 03:33 PM EDT	NOTARY - When necessary for State and Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)
---	--

EEOC Form 5 (11/09)

<p align="center">CHARGE OF DISCRIMINATION</p> <p><small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small></p>	<p>Charge Presented To: Agency(ies) Charge No(s):</p> <p><input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC</p> <p align="right">531-2021-03146</p>
<p align="center">NEW YORK STATE DIVISION OF HUMAN RIGHTS</p> <p align="center"><small>State or local Agency, if any</small></p>	
<p>I worked for the above-named company since May 2018 as a valet driver until I was threatened on June 4, 2020 when Dr. Daniel Skupski (White) made a hand gesture with his finger like a gun at me. I complained about the Drs threat, which fell on George Floyds funeral, and nothing was done. There was also an incident in 2019, in which my Indian Supervisor, Bankim Parekh elbowed me in the stomach which was reported but nothing was done by upper management. From about June and until I was terminated in March 2021 I was treated differently because of my race (Black) and national origin (African - American) when not given overtime like other workers, including Nascio (Dominican) and Mr. Singh (who shares my supervisors ethnicity). I complained about overtime and continued to complain about the Drs threat along with other events of discrimination. I did good deeds, such that I was placed on my former employers twitter site, as a model employee, yet I was terminated for no good reason. I was not asked to come in early two hours to cover Arlerda Pichardo (Hispanic). As an example, in January 2021 George ? (Hispanic) crashed a lady's car and is still employed, while I was let go for asking for a copy of a video. In February 2021, Willare Armstrong (Black) struck a pedestrian running them over and he was not terminated. Other employees had accidents and did other things which did not result in their suspension, or termination while I was treated much less favorably than them because of my ethnicity and race. When I asked for a copy of the video footage of the dr. threatening me, I was wrongfully suspended on March 19, 2021 pending an investigation. Later, I was wrongfully terminated on March 29, 2021, in retaliation for advocating for my discrimination rights as described above, all in violation of Title VII of the Civil Rights Act of 1964, as amended.</p>	

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EEOC Form 5 (11/09)

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NEW YORK STATE DIVISION OF HUMAN RIGHTS and EEOC <i>State or local Agency, if any</i>			
Name (indicate Mr., Ms., Mrs.) MR. BARRY W FITZGERALD		Home Phone 917-683-9181	Year of Birth 1915
Street Address City, State and ZIP Code 21 SAINT JAMES PL, BROOKLYN, NY 11205			
Named Is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name SODEXO INC, NEW YORK PRESBYTERIAN QUEENS DR. SKUPSKI		No. Employees, Members Unknown	Phone No. (877) 729-7369
Street Address City, State and ZIP Code 9801 WASHINGTONIAN BLVD, GAITHERSBURG, MD 20878			
Name		No. Employees, Members	Phone No.
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 01-01-2019 03-29-2021	
<input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input checked="" type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		<input type="checkbox"/> CONTINUING ACTION	
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Digitally signed by Barry W Fitzgerald on 09-09-2021 03:33 PM EDT

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I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
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SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
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EEOC Form 5 (11/09)

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EXHIBIT B

JacksonLewis

Jackson Lewis P.C.
58 South Service Road, Suite 250
Melville, NY 11747
(631) 247-0404 Main
(631) 247-0417 Fax
jacksonlewis.com

MY DIRECT DIAL IS: 631-247-4666
MY EMAIL ADDRESS IS: WILLIAM.KANG@JACKSONLEWIS.COM

October 7, 2022

VIA OVERNIGHT MAIL

United States Marshals Service
225 Cadman Plaza East, Suite G-20S
Brooklyn, New York 11201

Re: Barry Fitzgerald v. Sodexo, Inc., et al.
Case No. 22-CV-3410

To Whom It May Concern:

On behalf of Defendant Sodexo, Inc. ("Defendant"), the undersigned acknowledges receipt of the Notice and Acknowledgment of Receipt of Summons and Complaint by Mail for case number 22-CV-3410 in the United States District Court for the Eastern District of New York. We have also received a copy of the Complaint in this action.

We agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that the entity on whose behalf we are acting be served with judicial process in the manner provided by Rule 4. The entity on whose behalf we are acting will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons. Accordingly, please find enclosed two signed original Notice and Acknowledgement of Receipt of Summons and Complaint forms.

Very truly yours,

JACKSON LEWIS P.C.

William Kang

William Kang

WK/nml
Enclosures

U.S. Department of Justice
United States Marshals Service



NOTICE AND ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT BY MAIL

United States District Court
for the
Eastern District of New York

TO: Sodexo, Inc. ET AL.
9801 Washingtonian Blvd
Gaithersburg, MD 20878

Civil Action, File Number 1:22-CV-3410 (AMD)

Barry Fitzgerald

v.

Sodexo, Inc. , Et. Al.

The enclosed summons and complaint are served pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure, and New York State law.

You **MUST COMPLETE** the acknowledgment part of this form below, **AND RETURN COPIES 1 AND 2** to the sender within 30 days. An envelope has been enclosed for this purpose. Keep copy 3 for your records.

YOU MUST SIGN AND DATE THE ACKNOWLEDGMENT ON ALL COPIES. If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return copies 1 and 2 of this form to the sender within 30 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return copies 1 and 2 of this form, you (or the party on whose behalf you are being served) must answer the complaint within 21 days for private defendants and/or 60 days for Federal defendants. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint By Mail was mailed on this date.

09/09/2022

Date of Signature

**GERSON
PACORI**

Digitally signed by GERSON
PACORI
Date: 2022.09.09 12:53:52 -04'00'

Signature (USMS Official)

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above captioned manner at:

58 South Service Road, Suite 250
Street Number and Street Name or P.O. Box No.

Melville NY 11747
City, State and Zip Code

[Signature]
Signature

Attorney
Relationship to Entity/Authority to Receive

Service of Process

10/6/22
Date of Signature

Copy 1 - Clerk of Court
Copy 2 - United States Marshals Service
Copy 3 - Addressee
Copy 4 - USMS District Suspense

USM Form-299
Rev. 05/10
Automated 10/03

U.S. Department of Justice
United States Marshals Service



NOTICE AND ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT BY MAIL
United States District Court
for the
Eastern District of New York

TO: Sodexo, Inc. ET AL.
9801 Washingtonian Blvd
Gaithersburg, MD 20878

Civil Action, File Number 1:22-CV-3410 (AMD)

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09/09/2022

Date of Signature

**GERSON
PACORI**

Digitally signed by GERSON
PACORI
Date: 2022.09.09 12:53:52 -04'00'

Signature (USMS Official)

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above captioned manner at:

58 South Service Road, Suite 250
Street Number and Street Name or P.O. Box No.

Melville, NY 11747
City, State and Zip Code

[Signature]
Signature

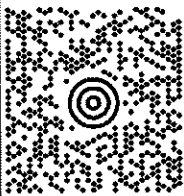

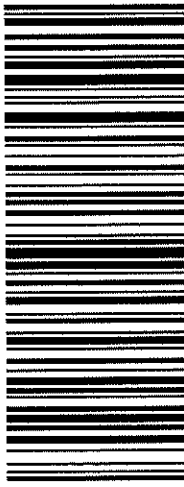

Attorney
Relationship to Entity/Authority to Receive

Service of Process

10/6/22
Date of Signature

Copy 1 - Clerk of Court
Copy 2 - United States Marshals Service
Copy 3 - Addressee
Copy 4 - USMS District Suspense

USM Form-299
Rev. 05/10
Automated 10/03

WILLIAM KANG 6312470404 JACKSON LEWIS P.C. 58 SOUTH SERVICE ROAD, SUITE 2 MELVILLE NY 11747 LTR 1 OF 1		SHIP TO: 7182600400 UNITED STATES MARSHALS SERVICE SUITE G-205 225 CADMAN PLAZA EAST BROOKLYN NY 11201	
		NY 111 9-50 	
UPS NEXT DAY AIR 1 TRACKING #: 1Z 5RE 839 01 3434 9681			
BILLING: P/P		Reference No.1: 21515.554300.20773 XOL 22.10.08 NV/RS 41.DA 10/2022* 	

FOLD on this line and place in shipping pouch with **bar code and delivery address** visible

1. Fold the first printed page in half and use as the shipping label.
2. Place the label in a waybill pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.
3. Keep the second page as a receipt for your records. The receipt contains information useful for tracking your package.

Kang, William (Long Island)

From: UPS <pkginfo@ups.com>
Sent: Tuesday, October 11, 2022 10:18 AM
To: Feist, Marianne (Long Island)
Subject: UPS Delivery Notification, Tracking Number 1Z5RE8390134349681

[EXTERNAL SENDER]



Hello, your package has been delivered.

Delivery Date: Tuesday, 10/11/2022

Delivery Time: 10:09 AM

Left At: OFFICE

Signed by: GORSON



[Set Delivery Instructions](#)

[Manage Preferences](#)

[View My Packages](#)

JACKSON LEWIS, P.C.

Tracking Number:

[1Z5RE8390134349681](#)

Ship To:

UNITED STATES MARSHALS SERVICE
225 CADMAN PLAZA EAST
SUITE G-20S
BROOKLYN, NY 11201
US

Number of Packages:

1

UPS Service:

UPS Next Day Air®

Package Weight:

0.0 LBS

Reference Number:

21515.554300.20773



[Download the UPS mobile app](#)

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[Review the UPS Privacy Notice](#)

[Review the UPS My Choice Service Terms](#)



EXHIBIT C

USM-285 is a 5-part form. Fill out the form and print 5 copies. Sign as needed and route as specified below.

U.S. Department of Justice
United States Marshals Service**PROCESS RECEIPT AND RETURN**

See "Instructions for Service of Process by U.S. Marshal"

PLAINTIFF BARRY FITZGERALD	COURT CASE NUMBER 22-CV-3410 (AMD)(CLP)
DEFENDANT SODEXO, INC., ET AL.,	TYPE OF PROCESS O, CMP AND S

SERVE AT	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
	SODEXO, INC.
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 9801 WASHINGTONIAN BLVD., GAITHERSBURG, MD 20878

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW PRO SE, Barry Fitzgerald 21 St. James Place Apt. 20N Brooklyn, NY 11205	Number of process to be served with this Form 285	3
	Number of parties to be served in this case	1
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):

Fold

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

Fold

★ OCT 07 2022 ★

BROOKLYN OFFICE

Signature of Attorney other Originator requesting service on behalf of: <i>S. GARDANO</i>	<input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER (718) 613-2610	DATE 7/12/22
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SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only for USM 285 if more than one USM 285 is submitted)	Total Process <u>1</u>	District of Origin No. <u>053</u>	District to Serve No. <u>0</u>	Signature of Authorized USMS Deputy or Clerk <i>[Signature]</i>	Date <u>9/15/22</u>
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I hereby certify and return that I ☐ have personally served, ☒ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode						
Address (complete only different than shown above)	<table border="1"> <tr> <td>Date <u>9/29/22</u></td> <td>Time <u>0800</u></td> <td><input checked="" type="checkbox"/> am <input type="checkbox"/> pm</td> </tr> <tr> <td colspan="3">Signature of U.S. Marshal or Deputy <i>[Signature]</i></td> </tr> </table>	Date <u>9/29/22</u>	Time <u>0800</u>	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm	Signature of U.S. Marshal or Deputy <i>[Signature]</i>		
Date <u>9/29/22</u>	Time <u>0800</u>	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm					
Signature of U.S. Marshal or Deputy <i>[Signature]</i>							

Service Fee	Total Mileage Charges including endeavors	Forwarding Fee <u>\$8.00</u>	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*) \$0.00
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REMARKS:


USM 299 MAIL WAIVER / CERTIFIED MAIL

PRINT 5 COPIES:

1. CLERK OF THE COURT
2. USMS RECORD
3. NOTICE OF SERVICE
4. BILLING STATEMENT*: To be returned to the U.S. Marshal with payment, if any amount is owed. Please remit promptly payable to U.S. Marshal.
5. ACKNOWLEDGMENT OF RECEIPT

PRIOR EDITIONS MAY BE USED

Form USM-285
Rev. 12/15/80
Automated 01/00

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>	<p>A. Signature X <u>SODEXO</u> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>																
<p>1. Article Addressed to:</p> <p><u>SODEXO INC.</u> <u>9801 WASHINGTON BLVD</u> <u>GAITHERSBURG, MD 20878</u></p>	<p>B. Received by (Printed Name) <u>SODEXO</u></p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																
<p></p> <p>9590 9402 7425 2055 6748 25</p> <p>2. Article Number (Transfer from service label) 7013 0600 0001 3566 6048</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input checked="" type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input checked="" type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Collect on Delivery Restricted Delivery		<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																
<input type="checkbox"/> Adult Signature Restricted Delivery	<input checked="" type="checkbox"/> Registered Mail™																
<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™																
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery																
<input type="checkbox"/> Collect on Delivery Restricted Delivery																	
<input type="checkbox"/> Insured Mail																	
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																	

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt